

## Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

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WALTER THIEMANN, et al.,	.	CIVIL ACTION NO. C-1-00-793
	.	
Plaintiffs,	.	Cincinnati, Ohio
	.	
- v -	.	Thursday, April 8, 2004
	.	10:00 a.m. Conference
OHSL FINANCIAL CORP.,	.	
et al.,	.	
	.	<b>Telephone Conference,</b>
Defendants.	.	<b>Re: Pending Motions</b>

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE SANDRA S. BECKWITH, JUDGE  
TRANSCRIPT ORDERED BY: Michael G. Brautigam, Esq.

APPEARANCES:

For the Plaintiffs: GENE MESH & ASSOCIATES  
BY: Michael G. Brautigam, Esq.  
and Gene I. Mesh, Esq.  
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Cincinnati, Ohio 45219

For PROVIDENT and  
OHSL FIN. CORP.:

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BIESER, GREER & LANDIS  
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For Defts. WEISS and  
KMK:

BARRETT & WEBER, LPA  
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Law Clerk: Patrick F. Smith, Esq.

Court Reporter: Mary Ann Ranz

\* \* \*

THURSDAY, APRIL 8, 2004

IN CHAMBERS TELEPHONIC CONFERENCE (10:03 a.m.)

THE COURT: Hello?

ALL COUNSEL: Hello.

THE COURT: Good morning.

ALL COUNSEL: Good morning.

THE COURT: Good morning. Two things. Let me do a short roll call on the record to see who is definitely on the line, then I want to introduce who's here. And a third item I just want to mention, as each person is speaking, please identify yourself so the record is clear. Mr. Mesh?

MR. MESH: Yes, ma'am. Present. This is Gene Mesh.

THE COURT: Mr. Brautigam?

MR. BRAUTIGAM: Yes. Good morning, Your Honor.

THE COURT: Good morning. Mr. Hust?

MR. HUST: Yes, Your Honor, I'm here.

THE COURT: Mr. Gauch?

MR. GAUCH: Yes, Your Honor, I'm here.

THE COURT: Ms. Perry?

MS. PERRY: Good morning, Your Honor.

THE COURT: Good morning. Mr. Barrett?

MR. BARRETT: Yes, Your Honor.

THE COURT: Mr. Breidenstein?

MR. BREIDENSTEIN: Yes, Your Honor.

THE COURT: Did I pronounce your name accurately?

1 MR. BREIDENSTEIN: Breidenstein, yes.

2 THE COURT: Breidenstein. Thank you. Mr. Burke?

3 MR. BURKE: Yes, Your Honor. And Jason Cohen of my  
4 office is here with me.

5 THE COURT: Is Ms. Rowe also with you, or on the  
6 line?

7 MR. BURKE: She is traveling today, Your Honor. She  
8 is not.

9 THE COURT: Okay. And Jaime Greer?

10 MR. GREER: Yes, Your Honor.

11 THE COURT: Very good. Present on this end is  
12 Mr. Patrick Smith, my career law clerk. The court reporter  
13 is Ms. Mary Ann Ranz, R A N Z. She is our official court  
14 reporter. And if you wish to have a transcript of this phone  
15 call, you can reach her at 513-564-7626.

16 MR. MESH: Thank you.

17 THE COURT: The purpose of the phone call today is  
18 to discuss the opposing letter that I received having to do  
19 with plaintiffs' motion to strike a number of the defendants'  
20 motions to dismiss. In particular, presumably he is  
21 directing or they are directing their motions to Documents  
22 252, 253, and 256 on our docket. And I'm assuming that,  
23 because plaintiffs have filed a response to the Dinsmore &  
24 Shohl motion to dismiss, which is Docket No. 246.

25 Am I reading you correctly, Messrs. Mesh and Brautigam?

1 MR. MESH: I believe you are, Judge. Do you have  
2 the date of those documents before you, if I may ask?

3 THE COURT: Just a moment. I can give them to you.

4 MR. MESH: Or at least the titles, Judge? I don't  
5 want you to go through the whole record.

6 THE COURT: Just a moment. It's not going to be a  
7 problem once I get --

8 MR. BARRETT: This is Mike Barrett. Gene, I think  
9 those are the documents you identified in your letter.

10 THE COURT: The first is dated January 30th, 2004.

11 MR. MESH: Okay. All right. That gives me the time  
12 line. I don't have the documents before me. I'm sorry.  
13 That's the reason I asked. I'm not in Cincinnati. Thank  
14 you.

15 THE COURT: Okay.

16 MR. BRAUTIGAM: Your Honor, this is Mike Brautigam  
17 speaking. With respect to the letter that Magistrate Judge  
18 Hogan allowed me to write, the purpose of the letter was  
19 because we believed that all of the motions to dismiss, with  
20 the exception of Ernst & Young's motions, were really motions  
21 for summary judgment, and at that time we wanted some  
22 guidance on how to proceed.

23 In any event, we did respond within the deadline set in  
24 Document 221, which is the existing Calendar Order, so to an  
25 extent a response is mooted. However, we still believe that

1 they were not really motions to dismiss but motions for  
2 summary judgment, so our request is that we be allowed to  
3 continue discovery and that they be treated as such.

4 THE COURT: Let me just check this.

5 (The Court reading a document.)

6 THE COURT: Mr. Brautigam, I'm looking at the docket  
7 sheet with regard to Document 221. It looks to me as if that  
8 Scheduling Order has been superseded by events, because it  
9 calls for a Final Pretrial Conference this month and trial  
10 next month.

11 MR. BRAUTIGAM: Your Honor, on my schedule it said  
12 April 2005.

13 THE COURT: I'm sorry; you're correct. You're  
14 correct. But -- all right. But you have only filed a  
15 response to the one motion to dismiss, which has been filed  
16 by Defendants Dinsmore & Shohl.

17 MR. BRAUTIGAM: No, Your Honor, that is not correct.  
18 This is Mike Brautigam again. We filed responses to all of  
19 the motions to dismiss within the applicable time frame.  
20 Every one of them, Your Honor.

21 MR. BARRETT: Your Honor, this is Mike Barrett  
22 speaking. My understanding of the request is to extend the  
23 time frame. And I think Mike raised a valid point. Since he  
24 has filed within the previously set time frame, the purpose  
25 of the letter is moot, and everything has been fully briefed

1 as far as we understand it.

2 THE COURT: Okay.

3 MR. MESH: Mike Brautigam, do you agree with this?

4 This is Gene.

5 MR. BRAUTIGAM: Your Honor, this is Mike Brautigam  
6 responding. I don't necessarily agree, because I believe  
7 that you will view these motions as motions for summary  
8 judgment; and if and when you do that, we respectfully  
9 request that a new schedule be set. In other words, with the  
10 exception of Ernst & Young, these were not typical motions  
11 for summary judgment. They were motions to dismiss. They  
12 were highly factual. They were much more like motions for  
13 summary judgment. And we would request additional time to  
14 fully brief the issues and respond.

15 THE COURT: Okay. Well, I think they're proper Rule  
16 12(b) motions, as my preliminary review indicates. Your  
17 Amended Complaint referenced deposition testimony from  
18 another case, and the defendants reference in their  
19 respective motions to dismiss that deposition testimony is  
20 fair game, as set forth in *Jackson versus City of Columbus*,  
21 which has been cited by the defendants, as well as *Weiner*  
22 *versus Klais & Company*. Both Sixth Circuit cases. Any  
23 document that's appended or referenced in a Complaint is  
24 treated as part of the record for the purposes of a motion to  
25 dismiss, and it does not convert a motion to dismiss to a



1 motion for summary judgment.

2 I'm not going to strike any of the defendants' motions to  
3 dismiss. I will not treat the motions to dismiss as motions  
4 for summary judgment. And since you filed a response to each  
5 and every motion, then we'll proceed to decide them in that  
6 fashion in due time.

7 While I have all counsel on the telephone, I would like  
8 to review a few things and make sure that everything that  
9 needs to be addressed in this case is addressed or has been  
10 addressed.

11 Looking back at the docket, it's not clear to me, going  
12 all the way back to December the 4th of 2001, that Keating,  
13 Muething & Klekamp's objections to a document subpoena has  
14 been ruled on, and I assume that that is now a moot issue.  
15 It had to do with internal work product.

16 MR. BURKE: Your Honor, this is Jim Burke. I'm not  
17 sure exactly what we're -- what the motion is. However, I'm  
18 not aware of any outstanding discovery disputes. I know when  
19 the new Scheduling Order was entered there were a lot of  
20 pending motions. Mr. Brautigam and I talked to the  
21 Magistrate Judge about that, that we agreed were moot. I  
22 don't recall that being an issue that remained to be  
23 adjudicated following that discussion, but I could check on  
24 that if you'd like.

25 THE COURT: All right. That is Document No. 57 and

1 the filing date was 12-4-01. And I think all of these fall  
2 in that same category. I just kind of like to tidy up the  
3 docket, if I can.

4 MR. BURKE: Sure.

5 THE COURT: The next one is Document 64, filed  
6 January 22nd of '02: Objections by all defendants, other  
7 than Dinsmore Shohl and Clifford Roe, to the Magistrate  
8 Judge's Order permitting the plaintiff to file an Amended  
9 Complaint.

10 MR. BURKE: That has obviously been moot, Your  
11 Honor.

12 THE COURT: Moot and overruled at this point.  
13 Document 125 filed September 4th of 2002: Objections by the  
14 plaintiff to the August 23rd, 2002 order by the Magistrate  
15 Judge quashing the subpoena of James Burke. And now that  
16 Dinsmore Shohl is a party to the proceedings, I assume --  
17 Keating, Muething & Klekamp, forgive me -- I assume that is  
18 also moot.

19 MR. BRAUTIGAM: Your Honor, we're happy if you  
20 consider it moot, but does that mean we're permitted to take  
21 Mr. Burke's deposition?

22 THE COURT: Who's speaking?

23 MR. BRAUTIGAM: This is Mike Brautigam, Your Honor.

24 THE COURT: My recollection is that the objection at  
25 that point in time was because Keating, Muething & Klekamp

1 were not yet defendants in the case. If I'm -- I did not  
2 pull the document. If there's other bases for the objection  
3 and the order by Magistrate Judge Hogan aside from that, I  
4 suppose it needs to be revisited. Mr. Burke?

5 MR. BURKE: Yes, Your Honor. I'm not clear exactly.  
6 I think the judge ordered that the deposition not go forward,  
7 and so the objection would be on Mr. Brautigam's part  
8 thinking that it should. So, perhaps we -- that one does  
9 need to be looked at. I don't think it would be difficult,  
10 but I think it may need to be looked at.

11 THE COURT: All right.

12 MR. BURKE: And I'm speaking, although  
13 Mr. Breidenstein and Mr. Barrett represent KMK in the matter  
14 and not myself.

15 MR. BREIDENSTEIN: Your Honor, Tom Breidenstein. I  
16 think that particular motion needs to be reviewed in terms of  
17 the Magistrate's Order of November of 2003, specifically  
18 Document 221, in which the Magistrate says there's a  
19 discovery -- discovery on claims against the newly added  
20 parties, specifically KMK, is stayed pending the  
21 determination of the motions to dismiss.

22 THE COURT: Okay.

23 MR. BARRETT: Your Honor, this is Mike Barrett.  
24 That is the last line of the Scheduling Order that Tom just  
25 referenced.

1 THE COURT: Thank you. Okay. We'll get to that  
2 ASAP.

3 Also outstanding, at least on the docket, Document 184,  
4 filed July 7th, 2003: Motion by plaintiff to strike errata  
5 -- that's E R R A T A -- supplemental authority submitted by  
6 KMK and for costs and sanctions, or, in the alternative, for  
7 an enlargement of time in which to respond to the  
8 supplemental motion. And it's in reference to -- it was  
9 supplemental material provided by Oak Hills Savings & Loan  
10 and Provident in support of their motion for reconsideration  
11 of the class certification and motion to decertify the class.

12 Perhaps I shouldn't assume. Is that motion moot, or is  
13 that still a live motion?

14 MR. BURKE: Your Honor, this view of decertification  
15 of the class, subject to what Mr. Brautigam thinks, is moot.  
16 But that is up to Mr. Brautigam.

17 MR. BRAUTIGAM: Your Honor, I don't necessarily  
18 believe that it's moot. In Document 219, it was a joint  
19 status report to the Court what needed to be decided and what  
20 documents are moot. I notice that Document 184 was listed at  
21 point 3, and we do have a motion for reconsideration of the  
22 decertification order. So, I would respectfully submit that  
23 that -- perhaps that does need to be decided.

24 THE COURT: I'm writing. Just hang on a second.  
25 All right.

1 MR. MESH: Judge Beckwith, this is Gene Mesh -- and  
2 all counsel. I have had a question that's probably --  
3 shouldn't be asked. But your order vacating the class  
4 certification, was that tantamount to a decertification  
5 order?

6 THE COURT: Yes.

7 MR. MESH: All right. Thank you.

8 THE COURT: All right. Anything else, folks, that  
9 you know of that's in play right now, other than the motions  
10 to dismiss that are -- and these other sort of long, overdue  
11 bits that we've managed to somehow overlook?

12 MR. BRAUTIGAM: Your Honor, this is Mike Brautigam.  
13 There are a number of discovery-related issues, some of which  
14 are before Magistrate Judge Hogan and some of which I believe  
15 are fully briefed and ready for decision by the Court.

16 Also, Your Honor, with respect to the current Scheduling  
17 Order, Document 221, plaintiffs had objected at that time,  
18 and we'd like to know if it would be appropriate to revisit  
19 that. We believe we do not need another year of litigation  
20 in this case, and that for a variety of reasons -- for  
21 example, the disclosure of experts, the deadline set by  
22 Document 221 is August 30th of 2004 for the -- we've done  
23 that in large part two years ago and we've identified our  
24 accounting expert in January of this year. So, we would  
25 like, if it's possible, to get a much more accelerated

1 schedule to go to trial in this matter.

2 THE COURT: Just a second.

3 (The Court and law clerk conferred privately.)

4 THE COURT: Well, Mr. Brautigam, tell me how  
5 Magistrate Judge Hogan has been, number one, clearly  
6 erroneous; number two, has made an order which is contrary to  
7 law; or, number three, has abused his discretion in setting  
8 that schedule, because that is the standard of review?

9 MR. BRAUTIGAM: Your Honor, we are faced with  
10 elderly director defendants who are subject to failing  
11 memories. So, the plaintiffs are severely prejudiced, as  
12 we've seen in recent depositions, when people say, "I can't  
13 remember the events from the summer of 1999." So, in the  
14 interest of justice, we respectfully request that the  
15 schedule should perhaps be revisited.

16 THE COURT: Mr. Barrett, anyone else that wishes to  
17 opine on this issue?

18 MR. BURKE: Your Honor, we -- this is Jim Burke. We  
19 did not believe, on behalf of Mr. Greer and I, that the  
20 Scheduling Order is any one of the three things Your Honor  
21 set forth.

22 Mr. Brautigam talks about elderly director defendants.  
23 All of those individuals have been deposed at great length,  
24 frequently on videotape, the testimony has been preserved,  
25 and we don't believe that Mr. Brautigam's claim of prejudice

1 is well-taken.

2 MR. GREER: Your Honor, this is Jaime Greer. As far  
3 as the testimony of these various individuals, I'll be  
4 turning 40 this month and I don't remember things from the  
5 summer of '99. So, I think this was just being honest.

6 MR. BARRETT: Your Honor, Mike Barrett and Tom  
7 Breidenstein. We concur with Mr. Burke's comments about the  
8 standard of review.

9 THE COURT: Mr. Brautigam, I'll give you the last  
10 word.

11 MR. BRAUTIGAM: I put my thoughts in my document,  
12 me-too.

13 THE COURT: Okay. I am not going to revisit  
14 Magistrate Judge Hogan's Scheduling Order. Your request is  
15 denied. Anything else, folks?

16 MR. HUST: John Hust, Your Honor. I have nothing  
17 else.

18 THE COURT: Okay. Mr. Mesh?

19 MR. MESH: Nothing, Your Honor. Thank you very  
20 much. Hope you're feeling better.

21 THE COURT: Thank you. Back to my old self. Former  
22 self, I should say.

23 MR. MESH: I have what you probably had.

24 THE COURT: Mr. Brautigam?

25 MR. BRAUTIGAM: No, Your Honor.

1 THE COURT: Mr. Hust?

2 MR. HUST: Nothing, Your Honor.

3 THE COURT: Mr. Gauch?

4 MR. GAUCH: Nothing, Your Honor.

5 THE COURT: Mr. Barrett, Mr. Breidenstein?

6 MR. BARRETT: Thank you, Your Honor.

7 THE COURT: Mr. Burke?

8 MR. BURKE: Nothing, Your Honor. Thank you for your  
9 time.

10 THE COURT: And Mr. Greer?

11 MR. GREER: Nothing, Your Honor. Thank you.

12 THE COURT: All right. We'll get our Orders on  
13 these oldies and we will get cracking on the motions to  
14 dismiss and see if we can't move this matter along. You'll  
15 be hearing from us, if not in person, by document. Thank you  
16 all.

17 MR. MESH: We thank you.

18 ALL COUNSEL: Thank you, Your Honor. (10:23 a.m.)

19 - - -

20 PROCEEDINGS CONCLUDED

21 - - -

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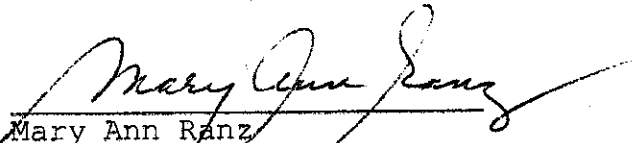
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C E R T I F I C A T E

I, Mary Ann Ranz, the undersigned, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Mary Ann Ranz", is written over a horizontal line.

Mary Ann Ranz  
Official Court Reporter